

3-DAY NOTICES

FREQUENTLY ASKED QUESTIONS & ANSWERS



NOTE: If you get Section 8, live in government subsidized housing, or rent a space in a mobile home park, you may have rights in addition to the ones listed in this Handout. If you live in one of these types of housing, call our office for legal advice.

THIS HANDOUT PROVIDES ONLY GENERAL LEGAL INFORMATION. IT IS NOT MEANT TO BE ADVICE FOR YOUR SPECIFIC LEGAL PROBLEM. IF YOU NEED LEGAL ADVICE, CONSULT AN ATTORNEY IF YOU ARE ABLE.

CAN I BE EVICTED ON A 3-DAY NOTICE?

There are different kinds of 3-Day notices. Most 3-Day notices can be corrected without having to move out of your apartment or home. The most common is the 3-Day notice to pay rent or quit. A landlord can give other kinds of 3-Day notices. Another common one is the notice that says the tenant has created a nuisance or has done something which is not allowed in the lease. All of these notices must be in writing.

THE 3-DAY NOTICE TO PAY RENT OR QUIT

If your rent is late or not paid in full, the landlord may give you a notice called a “Three-Day Notice to Pay Rent or Quit.” The landlord cannot give you this notice until the rent is late. This notice must be in writing.

WHAT MUST THE 3-DAY NOTICE TO PAY RENT OR QUIT SAY?

The notice must state:

1. No more than the exact amount of rent you owe (generally, this may NOT include late charges or other charges, although some courts have allowed late charges to be included);
2. That you have a choice of paying the rent or moving OUT (“Quit” is the legal term for moving);
3. Your correct address;
4. The name, address and telephone number of the person you are supposed to pay the rent to; and
5. If you are allowed to pay rent in person, the usual days and hours the person receiving the rent will be available. Note: If there is some other way you are supposed to pay rent, the landlord may have to explain that to you.

WHAT ARE MY CHOICES WITH A 3-DAY NOTICE TO PAY RENT OR QUIT?

To figure out when the third day is, start counting with the day after you received the notice. If the third day falls on a Saturday, Sunday or a holiday, you then have until the next business day to pay or move.

One choice is that you can move out during the three days. If you move out at this time, technically, the landlord cannot file a court eviction against you. However, some landlords try to do so anyway. **If this happens, please call our office immediately.** Also, even if you move out within the three days, the landlord can later sue you for past rent due. Most landlords will not bother with this.

Another choice is to pay the rent. **If you decide to pay, you should pay the entire amount that the notice asks for before the three days are up.** Make sure that you get a receipt. If you cannot pay the full amount, you may be better off not paying anything — unless you can agree on a payment schedule with the landlord. If you reach such an agreement, make sure it is in writing and keep a copy of the agreement.

If you offer the full amount asked for within the three days, the landlord must accept the money from you. If you think the landlord might refuse your money, take along a friend to be a witness in case the landlord refuses your money. After the three days, the landlord does not have to accept any money from you. If you decide to try to pay the landlord even if the three days are up, you should get a receipt and ask the landlord to agree in writing not to evict you. If the landlord refuses to agree to that, the landlord may still try to evict you.

WHAT IF I DO NOT PAY OR DO NOT MOVE WITHIN THE 3 DAYS?

After the three days are over, the landlord cannot simply put you out in the street, change the locks, or have the police or sheriff evict you without going to court first. The 3-Day notice is only the first step in the eviction process. The landlord must go to court and get a judge's order to get the rent and the house or apartment back. Later in this packet, you will find a short explanation about the eviction process.

THE 3-DAY NOTICE TO PERFORM COVENANT(S) OR QUIT

Sometimes this kind of notice is called "3-Day Notice to Perform or Quit." The landlord will give you this notice if s/he believes that you did something or did not do something that violated your lease or rental agreement. Some examples are if you did not pick up trash around your place, if you took in pets when they are not allowed, or if you left a junk car in the parking lot. This notice must be in writing.

After you get this notice, you have three days to fix the problem or move out. To figure out when the last day to fix the problem or move out is, start counting with the day after you received the notice. If the third day falls on a Saturday, Sunday or a holiday, you then have until the next business day to correct the problem. If you do not fix the problem and if you do not move out by the third day, your landlord may start the court process to evict you. However, after the three days are over, the landlord cannot simply put you out in the street, change the locks, or have the police or sheriff evict you without going to court first. The landlord must file court papers and get a judge's order to get the rent and the house or apartment back. Later in this packet, you will find a short explanation about the eviction process.

If you feel that you are being wrongly accused of breaking the lease, you should write to your landlord explaining your side of the story. Make sure to date and sign the letter and get it to the landlord as soon as possible. Make a copy of it for your records.

If you have broken the lease or rental agreement but now agree to obey it, you should write a letter to the landlord. Tell him or her that you have done what the notice requested and that you will obey the lease agreement from now on. Sign and date the letter and get it to the landlord as soon as possible. Keep a copy.

THE 3-DAY NOTICE TO QUIT

This kind of notice orders you to move because you have done something that the landlord believes *cannot be corrected*. This is the most serious notice your landlord can give you. For example, you may get this kind of notice if you have done illegal things (such as using or dealing drugs) on the property. This notice does not give you the chance to correct what was done. This notice means your landlord just wants you to move. This notice must be in writing.

If you feel that you are being wrongly accused of doing something that you did not do, you should write to your landlord immediately and state that you did not do what you are accused of doing. Make sure you date and sign the letter and get it to the landlord as soon as possible. You must also keep a copy of the letter for your records.

If you do not move out by the third day, your landlord may start the court process to evict you. However, after the three days are over, the landlord cannot simply put you out in the street, change the locks, or have the police or sheriff evict you without going to court first. The landlord must file court papers and get a judge's order to get the house or apartment back. Later in this packet, you will find a short explanation about the eviction process.

SERVICE OF THE 3-DAY NOTICE

The law states that you must be given a 3-Day Notice in writing. The courts are not always strict about how the landlord gives the 3-Day Notice to you. However, the law says that the landlord must give the notice to in one of the following ways:

1. **Personal Service** — by handing you a copy.
2. **Substituted Service** — If you are not home or at your usual workplace, a copy can be left at either place with a person who is old enough to understand the importance of the 3-Day Notice. A copy of the notice must also be mailed to you. Keep the envelopes in which the notices were mailed to you.
3. **“Nail and Mail”** — if the landlord cannot do either of the above, a copy of the 3-Day Notice can be posted on your property in a place that you will find it. A copy of the notice must also be mailed to you.

WHAT HAPPENS IF MY LANDLORD TAKES ME TO COURT TO EVICT ME?

If the landlord takes you to court to evict you, you will get legal papers called a “Summons” and a “Complaint.” Make a note of what day you receive these papers. You have five days from the day you receive the Summons and Complaint to respond to the court. To count the five days: start counting with the day after you received the papers. You must count Saturdays and Sundays, but do not count court holidays. If the fifth day falls on a Saturday, Sunday or holiday, you will have until the end of the next court business day to “answer” these papers.

Example: Jane gets the Summons and Complaint papers on a Monday. Tuesday is the first day of the 5 days. The 5th day would be a Saturday. Jane has until the next business day, Monday, to file her papers. If Monday is a holiday, Jane has until Tuesday.

If you want to fight the eviction, you should call our office immediately. Do NOT wait until the fifth day to call!! If you wait until then, we may not be able to help you.

Within those five days, you can file a written response to the landlord’s summons and complaint. You must use the right legal form and file it at the court where the lawsuit was filed. This form is called an “Answer.” If you are low-income and file a separate form called an “Application for Waiver of Court Fees and Costs,” you will probably not need to pay the court filing fees. You can get both the Answer and the Fee Waiver forms either at the court clerk’s office or at our office.

When you fill out the Answer, you put down any legal defenses to the eviction. After you file the Answer, you will receive a “Memorandum to Set Case for Trial” and a notice of the trial date by mail. Generally, the trial must be within 20 days of when the landlord files the “Memorandum to Set Case for Trial.” You must get notice from the clerk about when the trial will be at least five days before the trial. When your court date comes up, plan to arrive early at the courthouse so that you can find parking, get through the security check, and find the courtroom. **If you are late and the judge has already called your case, you will lose your case.**

WHAT IF I IGNORE THE SUMMONS AND COMPLAINT AND DO NOTHING?

After the five days are up, if you have not filed an Answer to challenge the eviction, the landlord can ask the court clerk for a “default judgment.” If this happens, you will NOT go before a judge. This means that the landlord automatically wins the case and gets the property back from you.

Sometimes the court will allow you to “re-open” the case after entering a “default judgment” if you have a good reason for not filing the Answer on time. If this happens to you, contact our office for a Default Eviction Packet.

NOTE: You should not assume that the court will allow you to “re-open” your case. In many cases, the tenant’s request is denied. Therefore, you must try to file your Answer within the 5 days so that you do not lose your case by missing a legal deadline.

WHAT HAPPENS AFTER LOSING IN COURT OR AFTER A JUDGMENT AGAINST ME?

If the landlord wins or gets a default judgment, the landlord gets a form called a “Writ of Possession.” The landlord takes this writ to the Sheriff’s Department who will then bring to you (or post on your door) a “Notice to Vacate.” The vacate notice will give you at least five days before the officer will come back to evict you. The Notice to Vacate will tell you exactly what date and time you must be out of the house or apartment. **Even if you are not completely moved out, the sheriff can prevent you from re-entering the house after the time and date of the notice.** You must get your belongings out before the officer comes to evict you. If this is impossible, at least remove your important papers, medications, valuables, and clothing. If you leave belongings behind, you can claim them within 15 days of the eviction, but you will have to **pay the storage and removal costs.** However, the landlord **cannot** require you to pay back rent, attorney’s fees or court costs to get back your belongings.

HOW LONG DOES THE EVICTION PROCESS TAKE?

If you do not file an Answer, the sheriff may be out to evict you as soon as 11 days after you receive the Summons and Complaint. If you file an Answer to the lawsuit, the process will take a little longer. Do not expect the entire process to take more than one month – it could take even less than one month. Contrary to some popular belief, you can be evicted if even if you are pregnant, have small children, have an unexpected financial hardship (like losing your job), if you’ve never been late with the rent before or if you have nowhere else to move.

For more information about the eviction process, you should check the local public library or a bookstore for Tenant’s Rights by Myron Moskovitz and Ralph Warner (Nolo Press).